

STRATEGIC PLANNING COMMITTEE

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

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REFLECTIONS ON THE SEVENTH ANNUAL STRATEGIC PLANNING SEPTEMBER 8 AND 9, 2003

The purpose of the United States Bankruptcy Court for the Southern District of New York is to provide, economically, a fair, consistent and effective forum for the protection and marshaling of estate assets, the discharge or adjustment of debts, and the timely distribution of property or securities, in accordance with applicable law.

INTRODUCTION

The United States Bankruptcy Court for the Southern District of New York held its eighth annual strategic planning session on September 8 and 9, 2003.

Continuing with tradition, the committee consisted of a cross-section of court constituents and staff, including representatives from the three divisions of the court located in Manhattan, White Plains and Poughkeepsie. The process is a collaborative effort among judges, clerk's office staff, representatives from the United States Trustee's and United States Attorney's Offices and members of the bankruptcy bar. The Federal Judicial Center and the Administrative Office of the United States Courts continue to play a valuable role in helping to support the process.

The committee reaffirmed its support of the court's purpose, values and critical functions established at previous strategic planning sessions. The mission of the court, together with the underlying constants, continues to serve as the foundation on which management decisions are made and goals for the court are identified.

The structure of the strategic planning process encourages information sharing and innovative thinking among participants. The strategic planning session identifies the framework for changes in policy and procedure necessary to guide the court in the future.

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THE PROCESS

The focus of this session was the management of cases under chapter 7, 11 and 13. Each of these three operative chapters was discussed separately, as committee members tried to identify the greatest needs of the different constituents (debtors, creditors, attorneys, trustees, etc.) and sought ways to improve the management of cases under these chapters. This was done by identifying constituents' greatest needs; developing, and committing to, priority goals to meet the needs; and aligning the system to achieve the priority goals. The structure of the two-day session allowed for convening as an entire group and for breaking into sub-groups for discussion and the development of ideas.

THE PLAN

The strategic plan emerging from this two-day session consists of a number of different goals designed to improve the management of cases. The goals listed below are in the following order: chapter 7, chapter 13 and chapter 11.

Goal 1 – Chapter 7:

Educate both chapter 7 practitioners and *pro se* filers with respect to the filing requirements by increasing the knowledge of filing requirements among practitioners and *pro se* filers. Improve the knowledge of filing requirements to reduce the time spent by Clerk's Office staff in obtaining missing information or correcting inaccurate information.

Strategy:

Form an *ad hoc* committee to pursue the development and implementation of learning tools for different constituents; for example, develop a CLE program for chapter 7 practitioners, and explore the use of web-based training for *pro se* filers.

- ! **Attorneys:** Develop CLE program for chapter 7 practitioners.
- ! **Pro se filers:** *Pro se* filers gaining a better understanding of the bankruptcy process would be less reliant on non-attorney petition preparers.
 - Explore the availability of web-based learning resources to refer *pro se* filers. *Pro se* filers' use of external sources for reliable bankruptcy information would reduce the amount of time spent by Clerk's Office staff in assisting *pro se* debtors.
 - Make available templates for *pro se* debtors to use when preparing a petition

and other related documents (*e.g.*, schedules, statements, etc.).

Goal 2 – Chapter 7:

Use the Court’s Electronic Case Filing (ECF) System to automatically schedule § 341(a) meetings, issue discharge orders and close cases.

Strategy:

Develop a program to automate certain administrative functions in the bankruptcy process.

- ! Automate certain administrative functions to promote efficiency in the Clerk’s Office while reducing the time within which chapter 7 cases are administered, resulting in debtors receiving their discharges more timely.
- ! Automate administrative functions, where possible, to achieve a goal previously established at a Strategic Planning Committee meeting to close 90% of the court’s no-asset chapter 7 cases within 120 days of filing.

Goal 3 – Chapter 7:

Develop better ways to address §523 debt dischargeability proceedings when the debtor is not represented by counsel.

Strategy:

Create an *ad hoc* committee (the composition of which would include creditor representation) to develop a procedure for debtors to obtain legal assistance in §523 matters.

- ! Reactivate the *pro bono* panel.
- ! Explore the feasibility of requiring chapter 7 practitioners to provide assistance whenever their debtor-clients are involved in such litigation.

Goal 4 – Chapter 7:

Reduce the amount of time it takes for a chapter 7 trustee to sell minimal amounts of assets.

Strategy:

Explore the establishment of guidelines for the sale of minimal amounts of assets by chapter 7 trustees.

- ! Reduce the time for the trustee to dispose of assets, thereby minimizing additional administrative expense.
- ! Generate additional funds for creditors faster.

Goal 5 – Chapter 13:

Create more cohesion and uniformity in the administration of chapter 13 cases among the three divisional offices.

Strategy:

The Chief Judge to appoint a committee representing the different participants in the chapter 13 process to draft a comprehensive standing order pertaining to chapter 13 case administration and covering a range of subjects such as debtor's rights and duties, effective notice requirements, and deadlines to be set in a chapter 13 case.

- ! Uniform rules would provide a more definitive statement of the rights and duties of chapter 13 debtors, including the right to be heard before the Judge assigned to the case.

Goal 6 – Chapter 13:

Correct the difficulty in fact finding caused by poor record keeping by individual debtors and financial institutions.

Strategy:

Improve the fact finding process. The court will consider establishing a new requirement that default allegations be accompanied by evidence affirmatively establishing the facts related to the default, and explore taking a similar approach with respect to income, expense and other factual issues. Additionally, the court will consider amending the discovery rules to expedite discovery, including the depositions of affiants. The Chief Judge will appoint individuals to serve on a committee focusing on chapter 13 issues to consider the feasibility of implementing these changes

Goal 7 – Chapter 13:

Improve information retrieval in chapter 13 cases.

Strategy:

To improve access to current data related to the case (for example, information on whether funds already collected by the standing trustee have actually been disbursed).

- ! Improve the parties' ability to retrieve information thereby reducing the number of information requests made to court employees.
- ! The Chief Judge is to appoint individuals to serve on a committee focusing on chapter 13 issues. The committee is to develop a standing order pertaining to information disclosure and covering such topics as: content, timing, and means of disclosure (for example, providing access via the Internet).
- ! Explore methods such as holding one or more "town hall" meetings to discuss views on chapter 13 issues.

Goal 8 – Chapter 11:

Address the need to have a standing process to develop new guidelines and standardize procedures for chapter 11 cases.

Strategy:

Develop a standing process to provide an ongoing forum for the development of new guidelines.

- !** Establish greater efficiency and clarify expectations, thereby reducing litigation and its related costs to the chapter 11 estate.

Goal 9 – Chapter 11:

Streamline dispute resolution in an effort to improve case management.

Strategy:

Create a standing committee to explore a number of alternatives such as: mediation and its deployment, case management orders to streamline motion practice, and pre-conference and scheduling orders to reduce the age of adversary proceedings (to 12 months for complex matters and 6 months for non-complex matters).

- !** For example, a case management order pertaining to motion practice would provide practitioners with a sense of the court's preference for handling a contested matter (covering topics such as the use of declarations in lieu of direct testimony and the reliance on uncontested allegations).

Goal 10 – Chapter 11:

Explore ways to add some flexibility to assignment of adversary proceedings.

Strategy:

Where a case generates a large number of adversary proceedings, explore the possible benefits of splitting a portion of the adversary proceedings from the case so that another judge – that is, someone other than the judge who is assigned to the case – hears the adversary proceedings (for example, the judge hearing the adversary proceedings could be from a different divisional office).

- ! Evaluate whether this approach would help ease the burden of the increasing number of adversary proceedings being filed.

Goal 11 – Chapter 11:

Improve and standardize procedures for asset sales in chapter 11 cases.

Strategy:

Develop new procedures and guidelines that would help generate funds for distribution to creditors easier and more expeditious.

- ! Asset sales in bankruptcy cases have been getting larger and more complicated and are occurring with greater frequency.
- ! While a perception exists that there may be a substantial discount in bankruptcy-related asset sales, the potential for a premium exists due to the fact that the assets bought in a bankruptcy-related sale are potentially “cleaner” than would be if purchased outside of the bankruptcy context.

Goal 12 – Chapter 11:

Reduce the information “overload” experienced by those in chapter 11 practice due, in part, to the Court’s Electronic Case Filing (ECF) System (for example, e-mail notification).

Strategy:

Seek ways to make the user’s task of acquiring accurate information as user-friendly as possible. Accurate information should be easily accessed on the Court’s web site and – with linking – other web sites such as those maintained by the claims agents. Improving both the accessibility and quality of the information available will enhance predictability and reduce the number of calls to the Clerk’s Office.

- ! Redesign the Court’s web site and update it frequently.
- ! Make basic case information available on the Internet to those without a PACER password.
- ! Explore the possibility of creating an unofficial website for mega cases such as that used in the *Enron* case.
- ! Improve e-mail notification. Pursue the development of coding to separate substantive filings from non-substantive filings. Follow up with the Administrative Office on the progress of developing software for such coding and the possibility of modification at the local level.
- ! Increase the use of guidelines to assist practitioners. Some areas where guidelines may be useful are calendaring matters, asset sales, large case management, case conferences and first-day orders.

Goal 13 – Chapter 11:

Enhance the education of court staff and practitioners, especially new employees at the Court (such as new law clerks) and recently admitted practitioners.

Strategy:

Enhance education to address need of the court and new practitioners in the court in an effort to obtain greater efficiency and accuracy.

- ! Educate the Clerk’s Office staff with respect to the chapter 11 process to achieve more

accurate docketing and provide more accurate information to the public.

- ! Develop training classes and manuals (*e.g.*, web-based manuals) to further the goal of improving education; both classes and manuals to be tailored to fit different needs (for example, law clerks, Clerk's Office staff, practitioners, etc.).

CONCLUSION:

The court continues to work on the goals set out in previous strategic plans that have not yet been achieved. Others have been incorporated into the standard operating practices and procedures of the court.

By focusing on ways to improve the management of cases under chapter 7, 11 and 13, those attending this strategic planning session have identified worthy goals and strategies for achieving those goals.

Once again, the court is indebted to the members of the strategic planning committee and thanks them for their time, efforts and hard work. The strategic plan continues to assist the court in maintaining its focus on a shared vision for the future.